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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of

: Docket: W9490-02

Libanati et al.

: Date: April 9, 2003

Serial No. 10/062,602

: Art Unit: 1614

Filed: January 31, 2002

: Examiner: ROSE, Shep K.

For: High Cleaning Silica Gel Dental Abrasive Dentifrices Prepared Therefrom, and a Method for Preparing the Dental Abrasive

Commissioner of Patents & Trademarks
Washington, D.C. 20231

ELECTION

Sir:

In response to the Office Action dated March 19, 2003, Applicants hereby elect the Invention of Group III related to a dentifrice composition, i.e., claims 6-12, for prosecution in the above-identified patent application. This Election is made with traverse.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8

Pursuant to 37 CFR §1.8, I hereby certify that I have a reasonable basis to expect that this correspondence will be deposited with the United States Postal Service on or before the date indicated, as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

April 9, 2003

Date

[Signature]

Signature

In the Office Action, the basis for restricting the claims of Groups II and III is as follows:

Inventions II and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP §806.04(b) 3rd paragraph), and the species are patentably distinct (MPEP §806.04(h)). In the instant case, the intermediate product is deemed to be useful as an abrasive for non-dentifrice scouring powders, cleansers, cleaning and polishing dentures, and other inanimate surfaces and the inventions are deemed patentably distinct since there is nothing on this record to show them to obvious variants.

Under MPEP §806.04(f), it is recited that:

...the general test as to claims that are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

In the present application, the silica abrasive composition recited in claims 1-5, i.e., Group II, sets forth certain properties. The present application also includes dentifrice composition claims 6-12, i.e., Group III, that recite all of the properties set forth in claim 1. Accordingly, even though claim 6 recites limitations that are not found in claim 1, claim 1 does not recite any properties or elements that are not found in claim 6. Accordingly, inventions I and III are not mutually exclusive species.

Additionally, under MPEP §803, a restriction requirement is only appropriate if the inventions are independent or distinct and there is a serious burden on the Examiner. In the present application, all of the elements recited in instant claim 1 are found in claim 6. A search for invention Group III would encompass the search performed for Group II. Accordingly, a search for Groups II and III would not constitute a serious burden upon the Examiner.

Thus, Applicants submit that there is unity of invention among Groups II and III and withdrawal of the election requirement is respectfully requested.

In the event that further information is required, please contact the undersigned
at (410) 531 4333.

Respectfully submitted



William D. Bunch
Attorney for Applicants
Registration No. 35,027

Dated : 4/9/23
Tel: (410) 531-4333
W. R. Grace & Co.-Conn.
7500 Grace Drive
Columbia, Maryland 21044-4098